

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**JOCELYN A. JONES, Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
BILOXI MEDICAL CENTER, Biloxi, MS,  
Employer**

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**Docket No. 05-1136  
Issued: August 16, 2005**

*Appearances:*  
*Jocelyn A. Jones, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 25, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated March 17, 2005, denying her claim for a traumatic injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the March 17, 2005 decision.

**ISSUE**

The issue is whether appellant sustained a neck injury in the performance of duty on October 22, 2004 causally related to factors of her federal employment.

**FACTUAL HISTORY**

On February 11, 2005 appellant, then a 51-year-old clerk, filed a traumatic injury claim alleging that on October 22, 2004 she injured her neck while sitting in her chair and her "whole body went back." On the claim form, her supervisor stated that appellant did not report the October 22, 2004 incident until February 11, 2005. The supervisor stated that there was no

witness to the incident and appellant had been off duty for several weeks under another compensation claim.<sup>1</sup>

In a February 9, 2005 statement, appellant's supervisor stated that appellant telephoned and indicated that she wanted to file a compensation claim because an earlier claim "only covers my lower back, not my neck ... I need to file a claim for my neck." The supervisor stated that appellant did not indicate that she fell out of her chair, "just swayed back."

By letter dated February 16, 2005, the Office advised appellant that she needed to submit additional evidence in support of her claim, including a more detailed description of the incident on October 22, 2004, an explanation as to why she did not seek medical attention at that time and a rationalized opinion from a physician explaining how her medical condition was causally related to the October 22, 2004 incident.

In a February 24, 2005 accident report, an employing establishment safety officer stated that appellant alleged that on October 22, 2004 her chair swung back, causing a neck injury. Appellant's supervisor indicated that on October 5, 2004 a broken chair had been replaced with one that was adjustable for height.

In disability certificates dated December 15, 2004 to January 18, 2005, Dr. Joseph L. Faison, an attending family practitioner, indicated that appellant was under his care and was able to return to work on March 3, 2005. He did not provide a diagnosis or mention an incident on October 22, 2004.

By decision dated March 17, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained an injury on October 22, 2004 at the time, place and in the manner alleged, causally related to her employment.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden to establish the essential elements of her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

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<sup>1</sup> The record shows that, on December 29, 2004, appellant filed a claim for a recurrence of disability in November 2004 causally related to an August 8, 1993 employment-related back injury.

<sup>2</sup> Appellant submitted additional evidence subsequent to the Office decision of March 17, 2005. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>6</sup> An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.

To establish a causal relationship between appellant’s condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

### ANALYSIS

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee’s statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. The employee has not met her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>8</sup> In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on a claimant’s statements.<sup>9</sup> Appellant did not report the alleged October 22, 2004 incident until February 11, 2005 and gave no reason for the delay. When appellant did report the alleged October 22, 2004 injury she informed her supervisor that she was filing the claim because her other claim for a previous injury was only for the back, not the neck. The record indicates that appellant did not seek medical attention from a physician until December 15, 2004. Appellant did not provide a history of injury to the doctor, and he was therefore unable to verify the incident on October 22, 2004. There were no witnesses to the alleged incident on October 22, 2004. Appellant stated that she injured her neck while she was sitting in her desk chair and her “whole body went back.” She did not provide further detail. The Board finds that these inconsistencies in the factual evidence

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<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>7</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 6.

<sup>8</sup> *Linda S. Christian*, 46 ECAB 598 (1995).

<sup>9</sup> *Id.*

cast substantial doubt as to whether the October 22, 2004 incident occurred at the time, place and in the manner alleged.

**CONCLUSION**

The Board finds that appellant failed to submit sufficient factual and medical evidence to establish that she sustained a neck injury on October 22, 2004 at the time, place and in the manner alleged. Therefore, the Office properly denied her claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 17, 2005 is affirmed.

Issued: August 16, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board